In the Supreme Court of the United States

OCTOBER TERM, 1968

LUCIUS J. BRELAND, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINION BELOW

The opinion of the court of appeals (Pet. App.) is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on June 25, 1968. The petition for a writ of certiorari was filed on July 25, 1968. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether counts charging mailings to defraud various insurance companies were properly joined.

STATEMENT

After a jury trial in the United States District Court for the Eastern District of Louisiana, petitioner was convicted on six counts charging use of the mails in furtherance of a fraudulent scheme, in violation of 18 U.S.C. 1341, and on one count charging the use of a ficititious name to receive mail in furtherance of the above scheme, in violation of 18 U.S.C. 1342. Following conviction, petitioner was sentenced to three years' imprisonment on each count, the sentences to run concurrently. The court of appeals affirmed, *per curiam* (Pet. App.).

The sole question for consideration is whether the six counts were properly tried together.

The indictment charged a general scheme to defraud several insurance companies which was set forth in count one and was realleged in each of the other counts. Each count was based on a particular mailing.

1. Counts I and II were based on petitioner's application for disability insurance to two separate companies in June, 1960 and November, 1960. In each application petitioner denied having ever had a life or disability policy cancelled or an application therefor rejected, and denied currently possessing such a policy, or having ever received any benefits under such a policy. He also claimed never to have been treated

in any hospital or, in the previous ten years, by any physician (R. 3-4, 35-39, 92). In fact, petitioner had previously had a disability policy cancelled (R. 44-45, 50), had been refused coverage (R. 189), and at the time of application had two such policies in effect (R. 55-56, 78). In addition, petitioner had received compensation under several policies for injuries suffered (R. 48-59, 55-56, 59-61, 63-66, 187) and had been treated at hospitals and by physicians prior to filling out the application (R. 69-72, 73-75).

2. Counts III, IV, and VIII related to a scheme to defraud the New Amsterdam Casualty Company in connection with a claimed automobile loss, during the course of which petitioner applied by mail for a vehicle registration under a false name (Count III, R. 4), sent a false proof of loss through the mails (Count IV, R. 4-5), and applied for a Post Office box under an assumed name (Count VIII, R. 7-8).

The proof showed that in May 1960, a 1960 Volkswagen, belonging to one Harvey Pierce, was totally wrecked as the result of an accident (R. 121-124). The agent who settled Pierce's claim sold the Volkswagen as salvage to petitioner for $450 (R. 120-121). Petitioner applied for a registration certificate for a 1960 Volkswagen as "L. J. *Ber*land" (rather than his true name L. J. *Bree*land) and gave his address as a Post Office box in New Orleans (R. 182-184). In his application for the box, he also used the name "L. J. *Ber*land" (R. 117, 202-203). Petitioner then had New Amsterdam Casualty Company transfer his car insurance to the Volkswagen (R. 110). Although the agent had known petitioner as L. J. Breeland, the in-

surance policy was issued to him in the name of "L. J. Berland" with his address listed as a Post Office box in New Orleans (R. 109, 112). Several weeks later, petitioner telephoned his insurance agent to report that the car had been stolen (R. 112). The allegedly stolen vehicle was eventually discovered in a badly damaged condition (R. 126-128). Petitioner completed a proof of loss form—dated September 12, 1960—and mailed it to the New Orleans branch office of the New Amsterdam Casualty Company in the name of L. J. Berland (R. 157-158). Several witnesses testified that petitioner's Volkswagen was in almost the identical condition—dent for dent and scratch for scratch—following the alleged theft and crash as it had been following Mr. Pierce's accident (R. 135-139, 159-161).

3. Counts V and VI involved a fraudulent claim submitted to the Security Insurance Company in connection with a fire loss on a dwelling owned by petitioner. Count V charged petitioner with mailing a false inventory of the contents of the house (R. 5-6), and Count VI alleged that petitioner had mailed a false sworn proof of claim to the insurer (R. 6).

On August 4, 1960, the insured dwelling was destroyed by fire (R. 247). On September 17, 1960, petitioner mailed his inventory of personal effects to the General Adjustment Bureau (R. 254), declaring that $10,486 worth of personalty was consumed in the fire (R. 256). On November 29, 1960, petitioner mailed to the same company his sworn proof of loss (R. 296) claiming a total loss of $24,000—$15,000 on

the structure and $9,000 on its contents (R. 249). Petitioner sought reimbursement under the policy for $16,800, the maximum sum payable (R. 251-252).[1]

The Bogalusa, Louisiana, Fire Chief testified that on the basis of his inspection of the scene, he believed the debris in the house was inconsistent with the claimed losses (R. 282-284). One claims adjuster noted the absence of items customarily found in such debris (R. 257) and another testified that he did not believe that the ashes and debris at the scene were consistent with the nature of the articles claimed to have been destroyed (R. 300-302).

ARGUMENT

The requirements for joinder of offenses under Rule 8(a) are satisfied if the offenses are of the same or similar nature or the transactions are so connected together as to constitute a common scheme. See *United States* v. *Stringi*, 378 F. 2d 896, 897 (C.A. 3), certiorari denied, *sub nom. Nightingale* v. *United States*, 389 U.S. 846; *United States* v. *Quinn*, 365 F. 2d 256, 273 (C.A. 7); *King* v. *United States*, 355 F. 2d 700, 703 (C.A. 1). These requirements were met in this case.

Each count of the indictment charged petitioner with the commission of an act which had for its ultimate purpose the defrauding of an insurance company. Defendant was the sole actor in each instance

[1] The claim was never paid. Following the routine investigation, the claim was referred to the company's legal department (R. 258-259).

and all the operative acts occurred within a one year period. Moreover, the means employed in furtherance of each of the offenses were substantially similar. Since the offenses were both part of a common scheme and of similar character, they were properly joined.

Nor did any undue prejudice arise out of the joinder of offenses which would necessitate their severance pursuant to Rule 14. The various aspects of the general scheme were so much alike that the proof of one would have been admissible at the trial of any of the others to prove petitioner's intent to defraud and knowledge that the representations were false. Moreover, the government's presentation of proofs was orderly and calculated to avoid confusion. First the evidence relating to Counts I and II was offered (R. 1-100), then all the evidence bearing on the scheme covered in Counts III, IV and VIII (R. 101-185); and finally the evidence pertinent to the jury's consideration of Counts V and VI (R. 195-310).[2] Furthermore three different witnesses whose testimony related to more than one scheme were required to testify only to the aspect and counts then under consideration and were recalled at a later time to testify with respect to other counts. See (1) 97-100, 119-124, 225-230; (2) 89-97, 230-236, 242-244; (3) 195-201, 296-303. Under such circumstances the jury could not

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[2] Minor departures were made in this presentation in the interest of brevity. Two witnesses whose testimony was material on more than one count, testified only at one time rather than giving the same testimony twice (R. 186-189 and 202-203).

have been confused and petitioner could have suffered no prejudice by virtue of his trial on the entire indictment.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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